

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

MARVIN F. BAKER,

Defendant.

CASE NO. 8:06CR4

MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 32) issued by Magistrate Judge Thomas D. Thalken recommending denial of the motion to suppress (Filing No. 11) filed by the Defendant, Marvin F. Baker. No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order suppressing evidence and statements obtained as a result of the Defendant's November 10, 2005, stop and December 25, 2005, traffic stop. Judge Thalken determined: the November 10, 2005, stop and arrest were lawful due to the outstanding arrest warrant; Baker's statement at the scene on November 10, 2005, with respect to "weed" was made when Baker was not in custody and volunteered; Baker's statements made while in custody with respect to where he found some bullets were voluntary; probable cause existed for the December 25, 2005, traffic stop because obstructive items hung from the rearview mirror and a check of the license plates revealed that the plates were not registered; the discovery of the gun under the rear part of the passenger seat¹ provided probable cause for Baker's arrest.

¹The search of the vehicle was lawful pursuant to the arrest of the driver, whose driver's license had been suspended.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the parties' briefs (Filing Nos. 12, 24) and the transcript (Filing No. 30). The Court has also viewed the evidence. (Filing No. 28) Because Judge Thalken fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 32) is adopted in its entirety; and
2. The Defendant's motion to suppress (Filing No. 11) is denied.

DATED this 19th day of June, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge